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Repl. Ref: 09/08/2006 SBASHEIR 0000353400  
US#: 00000000 Name/Number: 10568261  
FC: 9204 \$600.00 CR

In re Application of :  
ROSS, Gordon D. (deceased) :  
Application No.: 10/568,261 :  
PCT No.: PCT/US04/26359 :  
Int. Filing Date: 13 August 2004 :  
Priority Date: 13 August 2003 :  
Attorney Docket No.: 3593.100-003 :  
For: EFFECT OF BETA-GLUCAN ON STEM :  
CELL RECRUITMENT AND TISSUE :  
REPAIR :

DECISION ON REQUEST

09/08/2006 SBASHEIR 00000004 10568261

01 FC:2631	150.00 OP
02 FC:2633	100.00 OP
03 FC:2632	250.00 OP
04 FC:2614	100.00 OP

This decision is issued in response to the declaration filed 30 March 2006 which is being treated as a request under 37 CFR 1.42. Additionally, this decision is issued in response to applicant's "Transmittal of Small Entity Statement and Request for Reimbursement" filed 30 March 2006. No petition fee is required.

**BACKGROUND**

On 13 August 2004, applicant filed the above-identified international application which claimed a priority date of 13 August 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 13 February 2006.

On 13 February 2006, applicant filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; and a preliminary amendment.

On 30 March 2006, applicant filed a declaration executed by the legal representative, Trunetta Jo Dockter Ross. Additionally, applicant filed "Transmittal of Small Entity Statement and Request for Reimbursement."

**DISCUSSION**

A. Request under 37 CFR 1.42

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

The declaration filed on 30 March 2006 is executed by Trunetta Jo Dockter Ross as the "legal representative" of the deceased inventor, Gordon D. Ross. The declaration submitted appears to have been executed by the proper party under 37 CFR 1.42, however, the declaration does not satisfy the requirements under 37 CFR 1.497(b)(2).

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(a)(3) and 37 CFR 1.63, the declaration must also provide name, residence, citizenship, and post office address for the legal representative. In this case, the declaration filed on 30 March 2006 provides the residence, citizenship, and post office address for the legal representative but fails to provide the former citizenship of the deceased inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(b)(2).

B. Request for Refund under 37 CFR 1.26.

37 CFR 1.28(a) provides:

A refund pursuant to §1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee.

In the present case, the 30 March 2006 request for a refund of a portion of the fees paid upon filing the present application based upon the subsequent establishment of small entity status was made within three months of the payment of the large entity fees on 13 February 2006. Accordingly, petitioner is entitled to a refund of a portion of the large entity fees paid upon filing the present application.

**CONCLUSION**

For the above reasons, the request for status under 37 CFR 1.42 is **REFUSED**.

The request for refund under 37 CFR 1.28(a) is **GRANTED**.

Deposit Account no. 08-0380 will be refunded 600.00.

Applicants are required to provide an oath/declaration in compliance with 37 CFR 1.497(a)-(b) within **TWO (2) MONTHS** from the mail date of this Decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42" and must include an acceptable declaration under 37 CFR 1.497 which has been executed by the either the legal representative of the deceased inventor or, if no legal representative has been appointed, all of the heirs of the deceased inventor.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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